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1653

PATENT

ATTORNEY DOCKET NUMBER: 50125/008001

Certificate of Mailing: Date of Deposit: 5/6/04

I hereby certify under 37 C.F.R. § 1.8(a) that this correspondence is being deposited with the United States Postal Service as **first class mail** with sufficient postage on the date indicated above and is addressed to Mail Stop Petitions, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Colleen Coyne

Printed name of person mailing correspondence

Colleen Coyne

Signature of person mailing correspondence

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Marion Elke Hofmann et al. Art Unit: 1653
Serial No.: 09/445,362 Examiner: Carlson, K.
Filed: May 15, 2000 Customer No.: 21559
Title: MYOCARDIUM-AND SKELETAL MUSCLE-SPECIFIC
NUCLEIC ACID, ITS PREPARATION AND USE

Commissioner for Patents
Alexandria, VA 22313-1450

PETITION TO WITHDRAW NOTICE OF ABANDONMENT

Under 37 C.F.R. § 1.181(a) and MPEP 711.03(c)(I) and (II), applicants hereby petition to have the Notice of Abandonment that was mailed in connection with the above-captioned case on April 28, 2004 be withdrawn. A copy of the Notice is enclosed.

According to the Notice, the application was abandoned under 37 C.F.R. § 1.137 for applicants' failure to reply to an Office Action that, according to the Patent Office, was mailed on September 16, 2003. However, as explained below, this Office Action was never received from the U.S. Patent and Trademark Office.

The undersigned, applicants' attorney of record, first became aware of the abandonment on April 30, 2004, upon receipt of the Notice of Abandonment, and submits that this petition to withdraw the Notice is being promptly submitted as required by MPEP 711.03(c)(I).

The following documents are submitted as proof that a Notice was never received.

1. A copy of all docket reminders from the attorney's CPI patent docketing system for the above-referenced application, indicating an Office Action was never received.

Also enclosed is an original signed declaration by:

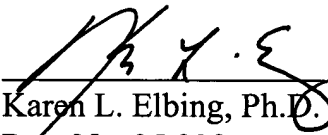
1. Karen L. Elbing, Ph.D., attesting on the basis of personal knowledge that the Office Action was never received.

Applicants submit that they never received an Office Action and request that the Notice of Abandonment be withdrawn. In addition, applicants request that a new Office Action be issued.

If there are any charges or any credits, please apply them to Deposit Account No. 03-2095.

Respectfully submitted,

Date: 6 May 2004



Karen L. Elbing, Ph.D.
Reg. No. 35,238

Clark & Elbing LLP
101 Federal Street
Boston, MA 02110
Telephone: 617-428-0200
Facsimile: 617-428-7045



PATENT
ATTORNEY DOCKET NUMBER: 50125/008001

Certificate of Mailing: Date of Deposit: 5/16/04

I hereby certify under 37 C.F.R. § 1.8(a) that this correspondence is being deposited with the United States Postal Service as **first class mail** with sufficient postage on the date indicated above and is addressed to Mail Stop Petitions, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Colleen Coyne
Printed name of person mailing correspondence

Colleen Coyne
Signature of person mailing correspondence

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Marion Elke Hofmann et al.	Art Unit:	1653
Serial No.:	09/445,362	Examiner:	Carlson, K.
Filed:	May 15, 2000	Customer No.:	21559
Title:	MYOCARDIUM-AND SKELETAL MUSCLE-SPECIFIC NUCLEIC ACID, ITS PREPARATION AND USE		

Commissioner for Patents
Alexandria, VA 22313-1450

DECLARATION OF KAREN L. ELBING, Ph.D.

I, Karen L. Elbing, declare as follows:

I am a partner in the law firm of Clark & Elbing LLP and an attorney of record in the above-captioned case.

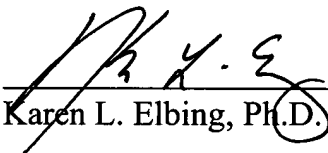
I first became aware of the abandonment of the above-captioned application on April 30, 2004, upon receipt of a Notice of Abandonment. I submit that the accompanying petition to withdraw the Notice is being promptly submitted as required by MPEP 711.03(c)(I).

Upon receiving the Notice of Abandonment, I reviewed the file but found no Office Action. In addition, I reviewed the records in our CPI patent docketing system; it revealed no record of an Office Action ever having been received by our office. Attached for verification are the records from our CPI patent docketing system.

All statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true; and further these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patents issued thereon.

Respectfully submitted,

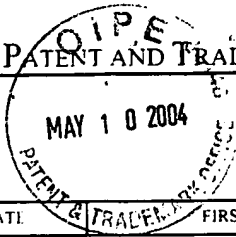
Date: 6 May 2004



Karen L. Elbing, Ph.D.



UNITED STATES PATENT AND TRADEMARK OFFICE



UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/445,362	05/15/2000	MARION ELKE HOFMANN	50125/008001	9849

21559 7590 04/28/2004

CLARK & ELBING LLP
101 FEDERAL STREET
BOSTON, MA 02110

EXAMINER

CARLSON, KAREN C

ART UNIT PAPER NUMBER

1653

DATE MAILED: 04/28/2004

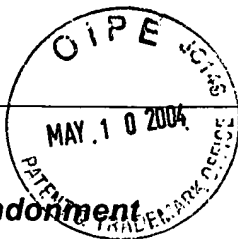
Please find below and/or attached an Office communication concerning this application or proceeding.

ACTION DUE Petition to withdraw
DUE DATE 7-28-04
INITIALS CAZ

ACTION DUE Petition to revive
DUE DATE 4-28-05
INITIALS CAZ

APR 30 2004

CLARK & ELBING LLP



Notice of Abandonment

Application No.

09/445,362

Examiner

Karen Cochrane Carlson,
Ph.D.

Applicant(s)

HOFMANN ET AL.

Art Unit

1653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

This application is abandoned in view of:

1. ☒ Applicant's failure to timely file a proper reply to the Office letter mailed on 16 September 2003.
 - (a) ☐ A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.
 - (b) ☐ A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 (a) to the final rejection.
(A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114).
 - (c) ☐ A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).
 - (d) ☒ No reply has been received.
2. ☐ Applicant's failure to timely pay the required issue fee and publication fee, if applicable, within the statutory period of three months from the mailing date of the Notice of Allowance (PTOL-85).
 - (a) ☐ The issue fee and publication fee, if applicable, was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the statutory period for payment of the issue fee (and publication fee) set in the Notice of Allowance (PTOL-85).
 - (b) ☐ The submitted fee of \$_____ is insufficient. A balance of \$_____ is due.
The issue fee required by 37 CFR 1.18 is \$_____. The publication fee, if required by 37 CFR 1.18(d), is \$_____.
 - (c) ☐ The issue fee and publication fee, if applicable, has not been received.
3. ☐ Applicant's failure to timely file corrected drawings as required by, and within the three-month period set in, the Notice of Allowability (PTO-37).
 - (a) ☐ Proposed corrected drawings were received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply.
 - (b) ☐ No corrected drawings have been received.
4. ☐ The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.
5. ☐ The letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.
6. ☐ The decision by the Board of Patent Appeals and Interference rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.
7. ☐ The reason(s) below:

Karen Cochrane Carlson Ph.D.

KAREN COCHRANE CARLSON, PH.D.
PRIMARY EXAMINER

Petitions to revive under 37 CFR 1.137(a) or (b), or requests to withdraw the holding of abandonment under 37 CFR 1.181, should be promptly filed to minimize any negative effects on patent term.

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Client-Matter Number: 50125-008

Country: US

Sub Case: 1

Application #: 09/445,362

United States of America

Filing Date: 10-Dec-1999

Status: PENDING

Action Type:

ASSIGNMENT

Action Base Date: 08-Aug-2000

Response Sent Date:

2	Action(s) Due	Due Date	Indicator	Taken	Completed
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	NOTICE OF RECORDATION	08-Nov-2000	Due Date	01-Nov-2000	Yes

User ID: gallagher

Date Created: 12-Nov-2000

Last Update: 14-May-2001

Go To:

Invention

Country Application

Letter

Actions Due	Clear	Copy	Search	Save	Print	Delete	Undo	Exit																								
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<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;">2</th> <th style="width: 40%;">Action(s) Due</th> <th style="width: 15%;">Due Date</th> <th style="width: 15%;">Indicator</th> <th style="width: 15%;">Taken</th> <th style="width: 10%;">Completed</th> </tr> </thead> <tbody> <tr> <td></td> <td>POSTCARD</td> <td>25-Jan-2002</td> <td>Reminder</td> <td>15-Jan-2002</td> <td>Yes</td> </tr> <tr> <td></td> <td>NOTICE OF RECORDATION</td> <td>08-Apr-2002</td> <td>Extended Due</td> <td>18-Mar-2002</td> <td>Yes</td> </tr> <tr> <td colspan="6" style="height: 50px;"></td> </tr> </tbody> </table>									2	Action(s) Due	Due Date	Indicator	Taken	Completed		POSTCARD	25-Jan-2002	Reminder	15-Jan-2002	Yes		NOTICE OF RECORDATION	08-Apr-2002	Extended Due	18-Mar-2002	Yes						
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Filing Date:	10-Dec-1999	Status :	PENDING																								
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Go To:	Invention	Country Application			Letter																						

Actions Due		Clear	Copy	Search	Save	Print	Delete	Undo	Exit												
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Actions Due		Clear	Copy	Search	Save	Print	Delete	Undo	Exit																		
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Go To:	Invention	Country Application			Letter																						

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Go To: Invention		Country Application		Letter																	

Actions Due		Clear	Copy	Search	Save	Print	Delete	Undo	Exit																		
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<table border="1"><thead><tr><th>1</th><th>Action(s) Due</th><th>Due Date</th><th>Indicator</th><th>Taken</th><th>Completed</th></tr></thead><tbody><tr><td></td><td>APPLICATION</td><td>07-Jan-2000</td><td>Extended Due</td><td>10-Dec-1999</td><td>Yes</td></tr><tr><td colspan="6" style="height: 50px;"></td></tr></tbody></table>										1	Action(s) Due	Due Date	Indicator	Taken	Completed		APPLICATION	07-Jan-2000	Extended Due	10-Dec-1999	Yes						
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User ID:	mcgarry	Date Created:	03-Apr-2002	Last Update:	01-Aug-2002																						
Go To:	Invention	Country Application	Letter																								

Actions Due	Clear	Copy	Search	Save	Print	Delete	Undo	Exit
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Client-Matter Number:	50125-008	Country:	US	Sub Case:	1
Application #:	09/445,362	United States of America			
Filing Date:	10-Dec-1999	Status :	PENDING		
Action Type:	NOTICE OF ABANDONMENT	Action Base Date:	28-Apr-2004		
		Response Sent Date:			

4	Action(s) Due	Due Date	Indicator	Taken	Completed
	PETITION TO WITHDRAW ABANDONME	28-May-2004	Reminder		
	PETITION TO REVIVE	28-May-2004	Reminder		
	PETITION TO WITHDRAW ABANDONME	28-Jun-2004	Final		
	PETITION TO REVIVE	28-Apr-2005	Final		

User ID:	inhorta	Date Created:	03-May-2004	Last Update:	03-May-2004
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Go To:	Invention	Country Application	Letter
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Actions Due	Clear	Copy	Search	Save	Print	Delete	Undo	Exit																																								
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